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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.236 OF 2006

The Commissioner of Customs
& Central Excise .....Appellant

Vs.

M/s.Supreme Industries Ltd.....Respondent

Mr. R.V. Desai, Seniolr Counsel with Mrs. S.V. Bharucha and Mr. K.R. Chaudhari for the Appellant.
Mr. M.H.Patil with Ms. Aparna Hirandagi, for Respondent

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 20th September,2007

P.C.:

. This is an Appeal by the Revenue against the order dated 5th April, 2005 whereby the Appeal preferred by the Revenue has been dismissed relying on the decision reported in 2005 (66)RLT 324 in the case of CCE, Mumbai-III vs. M/s.Metro Street Rolling Mills & Ors. At the hearing of this Appeal on behalf of the Appellant learned Counsel also draws our attention to the judgment of this Court in Central Excise Appeal No.3 of 2004 and other connected Appeals decided on April 23, 2007.

2. On the facts here, we find that the Adjudicating Authority was the Additional Commissioner. By order dated 28th April, 2004 the Commissioner directed the Additional Commissioner, Central Excise to apply to the Commissioner (Appeals). The Appeal in fact was preferred by the Additional Commissioner of Central Excise. However,

it was signed by the Assistant Commissioner, Central Excise, Khopoli. In other words the Appeal was instituted in the name as directed by the Commissioner, Central Excise.. The Appeal, however, was signed by a person other than the Applicant before the Commissioner of Central Excise (Appeals). Learned Counsel for the Respondent also draws our attention to Item No.2 of Form No.EA2 that the designation and address of the Applicant is shown as under:-

> "Assistant Commissioner of Central Excise, Khopoli Division, 1st Floor, Central Excise Building, Plot No.1, Sector -17, Khandeshwar, Panvel."

3. There is no dispute that this Court on the interpretation of the provisions of Section 35-E(2) has taken the view considering Section 35E(2) as it stood that the directions can only be issued to the Adjudicating Authority. On the facts in the instant case the direction was issued to the Adjudicating Authority.

4. The learned Tribunal in the impugned order relied on the judgment in on the decision reported in 2005 (66)RLT 324 to hold that the Appeal filed by the Additional Commissioner before the Commissioner

(Appeals) is not maintainable. In our opinion the Tribunal misdirected itself in law on this aspect.

5. In the instant case the Appeal was preferred in the name of the adjudicating authority. The question that had to be addressed by the Tribunal was whether the Appeal though filed in the name of the person authorised was filed by a competent person, who had authority from the person so designated by the Commissioner either by operation of law or pursuant to any power conferred on such authority. The other test would be whether such an Appeal which was instituted suffers from an illegality or merely an irregularity. If it be an illegality the Appeal had to be dismissed. If it be an irregularity it was open to the Tribunal then to pass such discretionary order in the matter.

6. Considering the above, the impugned order is set aside. The matter is remanded back to the Tribunal for reconsideration in terms of what we have set out above. Appeal accordingly disposed of.

7. In the event the Tribunal decides the issue against the Respondent herein then the respondent be heard on merits of the Appeal.

(J.P. DEVADHAR, J.) **(F.I.REBELLO, J.)**